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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,764	01/14/2004	Per Egnelov	030481-0213	1513

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FOLEY AND LARDNER LLP
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EXAMINER

TYSON, MELANIE RUANO

ART UNIT	PAPER NUMBER
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3773

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03/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/756,764	Applicant(s) EGNELOV ET AL.	
	Examiner Melanie Tyson	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 19-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03 October 2008 has been entered.

Election/Restrictions

Claims 17 and 18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 08 January 2009.

Response to Arguments

Applicant's arguments with respect to claims 1-17 and 19-28 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 3, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2 there is an inconsistency in the language of the body of the claims, thus making its scope unclear. Claim 2 recites a housing with a seal assembly only functionally recited, e.g. for guidance of a seal assembly, thus indicating that the claims are directed to the subcombination of the housing. However, lines 4-10 positively recite the seal assembly as an element of the invention, e.g. the seal assembly comprising, thus indicating that the claims are directed to the combination of the housing and the seal assembly. As such, it is unclear whether the applicant intends the claims to be drawn to the combination or the subcombination. Applicant is hereby to indicate which, the combination (a housing and seal assembly) or subcombination (a housing) the claims are intended to be drawn and make the language consistent with this intent. For examination purposes, the claims will be considered as drawn to the subcombination of a housing.

Claims 3 and 12 recite a seal assembly an addition to the inner and outer member recited in claim 1, from which claim 12 directly depends. The seal assembly is disclosed in the application as including an inner and outer member, thus the scope of claim 12 is unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 13, 15, 16, and 19-28 are rejected under 35 U.S.C. 102(b) as being anticipated by **Kensey et al. (U.S. Patent No. 5,021,059)**. Kensey discloses a closure device (see entire document) comprising an insertion tool (20) having a housing (24) and actuator (first actuator member 34, second actuator member 36, and mechanism 64/66 for employing the functions as claimed) operable in a first mode for deployment of an inner member (for example, see Figure 5) and in a second mode for tamping an outer member (for example, see Figures 6-7), a sleeve (28/32) received in, and connected to, the housing via luer locks and positioned over the distal end of the actuator (of portion 36), and a seal assembly (consisting of inner seal member 202 and outer locking member 204) operatively connected to a filament (206).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3-5, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kensey et al. in view of Kensey et al. (U.S. Patent No. 5,545,178)**. Kensey (059) discloses the claimed invention except for a pusher or a slider. Kensey (178) discloses a closure device (see entire document). Kensey teaches a pusher (40) and a slider (84) capable of performing the functions as claimed. It is well within the general knowledge of one having ordinary skill in the art to use a known technique to improve similar devices in the same way. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to incorporate a pusher or a slider as taught by Kensey (178) in the device of Kensey (059). Doing so would provide the device with a tightening and holding means, thus reducing the likelihood of the sealing member inadvertently becoming loose resulting in a leak and in turn providing optimum leak prevention.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kensey et al. in view of Kensey et al. (U.S. Publication No. 2001/0003158 A1)**. Kensey (059) discloses the claimed invention except for separate passageways for the seal assembly and a guiding member. Kensey (158) discloses a closure device (see entire document). Kensey teaches a housing (28') having separate passageways (for example, see Figure 32) that converge at the distal end. It is well within the general knowledge of one having ordinary skill in the art to use a known technique to improve similar devices in the same way. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to incorporate separate passageways as taught by Kensey (158) in the device of Kensey (059). Doing so would

provide the advantage of separate lumens, which would enable one to simultaneously utilize a guiding member, which would advantageously provide a guide for positioning the device at a surgical site, and seal assembly by reducing the possibility of entanglement or knotting between the two.

Allowable Subject Matter

Claims 6-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571)272-9062. The examiner can normally be reached on Monday through Friday 7-7 (max flex).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson /M. T./
Examiner, Art Unit 3773
March 12, 2009

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773